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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
TUGBANG, ANTHONY D	
ART UNIT	**PAPER NUMBER**
3729	

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)
	09/766,814	FJELSTAD ET AL.
	Examiner	Art Unit
	A. Dexter Tugbang	3729

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires *4* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): See Attachment.

4. ☒ Newly proposed or amended claim(s) *52-73,75,76* would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *52-73,75 and 76*.

   Claim(s) objected to: *None*.

   Claim(s) rejected: *74*.

   Claim(s) withdrawn from consideration: *1-51*.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☒ Other: *See Attachment*

A. Dexter Tugbang
Primary Examiner
Art Unit: 3729

Attachment to Advisory Action

1. With respect to item 3 of the Advisory Action, the applicant's arguments, see After Final response, filed 8/9/04, with respect to the merits of Kanji et al'007 have been fully considered and are persuasive. The rejection of Claims 52, 54, 55, 62-68 and 72 has been withdrawn as Kanji et al was utilized as the primary reference in the Final Rejection. The examiner, upon further consideration, further notes that Kanji et al does not teach the specific order of steps a, b and c as recited in Claim 52 in that step b occurs after step a, and step c occurs after step b.

2. With respect to item 7 of the Advisory Action, the examiner maintains the 35 U.S.C. 102(b) rejection of Claim 74. It is noted that Claim 74 is a Product-by-Process claim. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe,* 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Kanji et al satisfies all of the structural limitations of Claim 74.

3. With respect to item 10 of the Advisory Action, the examiner suggests the following to place the application in condition for allowance.

(i). Cancellation of Claims 1-51 as being directed to an invention non-elected without traverse.

(ii). It is noted that Claim 56 is a duplicate of Claim 75 and that Claim 73 is a duplicate of Claim 76. Duplicate Claims 56 and 73 should be cancelled.

(iii). Minor changes to the following claims are suggested to correct mere informalities with the language. These changes do not affect the scope of the claimed invention.

In Claim 55, "the top" (line 2) should be recited as --a top--; and "the contact" (line 3) should be recited as --a contact--.

In Claim 57, "claim 56" (line 1) should be changed to --claim 55--; and the term "the" (line 5) should be deleted.

In Claim 58, "a curable" (line 2) should be changed to --the curable--.

In Claim 75, the term --element-- should be added after "second microelectronic" (line 12); the phrase of "the top" (line 25) should be changed to --a top--; and the phrase of "the contact" (line 26) should be changed to --a contact--.

In Claim 76, the term --element-- should be added after "second microelectronic" (line 12).